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Advisory Panels

Greenwire

Deadline looms for scrapping agency advisory panels

<https://www.eenews.net/greenwire/stories/1060721275/search?keyword=EPA>

Niina H. Farah, E&E News reporter

Federal agencies have until Aug. 1 to submit plans for eliminating at least a third of their advisory committees, according to new guidance from the Office of Management and Budget.

The instructions follow an executive order signed by President Trump last month, which instructed agencies to get rid of panels established under the Federal Advisory Committee Act that have become obsolete or whose costs outweigh their benefits (Greenwire, June 17).

Agencies have until Sept. 30 to reduce the total number of committees and can count panels eliminated as of January 2017 toward their one-third total. Committees established by Congress through statutory authority would not be up for consideration.

The new guidance — released right after the Fourth of July holiday — states that ahead of that deadline agencies must come up with a "detailed plan" for either continuing or terminating each eligible committee, "including, as appropriate, recommended legislation for submission to the Congress."

The guidance breaks down how agencies should calculate how many committees to get rid of: divide the total number of advisory committees established under FACA by three and then round down to the closest whole number.

Agencies should then subtract any committees they had already eliminated since the beginning of the Trump administration. The remaining value is the minimum number of committees the agency must eliminate under the order.

Agencies seeking waivers to preserve certain advisory panels are encouraged to submit a request in writing to acting OMB Director Russell Vought.

"The Director may grant such a waiver if the Director concludes that it is necessary for the delivery of essential services, for effective program delivery, or because it is otherwise warranted by the public interest," the document reads.

Chris Zarba, the former director of EPA's Science Advisory Board, said the one-third reduction in committees seemed arbitrary. He noted that eliminating unused committees could be a good thing, but the administration should have set more clear criteria for eliminating panels.

For example, instead of broadly stating agencies should get rid of obsolete committees, the White House should have been more specific, like encouraging the review of committees that haven't met for two or three years.

Zarba said it's helpful for agencies to have expertise on hand, even if they don't meet frequently, if something comes up that requires independent policy advice.

"If you retire them and everyone is new, then they do some floundering about what their mission is. And we saw some of that on the Science Advisory Board," said Zarba.

He referred to the high turnover on the committee after former EPA Administrator Scott Pruitt changed the rules of membership so that those with EPA grant funding could no longer participate.

While more veteran members did help new members figure out how the committee worked, it took a longer time to get going, he said. "It certainly communicated to me that having experience in how the process works is a good thing," Zarba said.

Biofuel

Reuters

Trump intervention delaying EPA biofuel waiver action, sources say

<https://www.reuters.com/article/us-usa-biofuels-ethanol/trump-intervention-delaying-epa-biofuel-waiver-action-sources-say-idUSKCN1U52BP>

Humeyra Pamuk

WASHINGTON (Reuters) - U.S. President Donald Trump's request for a review of the administration's expanded use of biofuel waivers for oil refiners is holding up its decisions on 2018 applications, according to three sources familiar with the matter, two of whom said Trump may soon host a meeting on the issue.

Trump had ordered (here) members of his Cabinet to review the controversial waiver program, which exempts small refiners in financial turmoil from their obligation to blend ethanol into gasoline, last month after hearing from farmers angry about the issue during his recent Midwest tour.

Since Trump took office, the Environmental Protection Agency has more than quadrupled the number of waivers it has granted to refiners, saving the oil industry hundreds of millions of dollars, but enraging another key constituency - corn growers - who claim the move threatens ethanol demand.

Since Trump's request for a review, the EPA has been scrambling to come up with a solution to move forward with 40 pending applications for the waivers, called Small Refinery Exemptions or SREs, covering 2018.

"The SRE decision is being held up because the President wants to have this conversation," one of the sources familiar with the issue said.

Two sources said the White House could host a meeting next week on the issue that would include Trump, Agriculture Secretary Sonny Perdue, EPA Administrator Andrew Wheeler, and senators from both oil and farm states.

There was no final decision yet on whether a meeting would be held, or when, they said.

All three of the sources said that the 2018 SRE decisions were nearly finalized before Trump became involved.

The White House declined to comment.

The EPA responded to a request for comment by saying it was implementing biofuel policy in accordance with the law.

"We will work with the White House, DOE, USDA, members of Congress and other stakeholders to ensure the proper administration of the (Renewable Fuel Standard)," EPA spokesman Michael Abboud said in an emailed statement.

The Department of Energy provided the EPA its scoring results for the 40 outstanding 2018 applications in late April, sources told Reuters. EPA is required to decide on applications no later than 90 days after receiving them.

Some refiners say they filed their applications far earlier than April, and say the EPA is already late.

POLITICAL TIGHTROPE

The Renewable Fuel Standard, a more than decade-old regulation that is aimed at helping farmers and reducing U.S. dependence on oil, has been a big point of contention between the rivaling oil and corn industries, leaving Trump struggling to find a balance between the two important constituencies as he eyes a bid for re-election next year.

The regulation requires refiners to blend increasing volumes of ethanol and other biofuels into their fuel each year or purchase credits from those that do. But it also allows refining facilities of less than 75,000 barrels per day to request waivers if they can prove that complying with the law would cause them disproportionate financial hardship.

Small refineries owned by giants like Exxon Mobil and Chevron Corp, along with a facility owned by billionaire investor Carl Icahn have secured waivers from Trump's EPA, according to Reuters reporting.

Trump's request that Cabinet members, including Agriculture Secretary Perdue, help hash out a fix to the waiver program has become a source of concern for lawmakers representing oil refining states. Perdue has often publicly criticized the EPA's administration of the waiver program, siding with farmers.

Last week, Republican senators representing oil states wrote to Trump asking him to keep Perdue away from any decision-making process over the petitions. Louisiana Senator John Kennedy also wrote to Perdue saying he will block confirmation of agency nominations until Perdue “stops interfering.”

Chemicals

Bloomberg Environment

Manufacturers Aim to Convince EPA Their Chemical Use Is Safe

<https://news.bloombergenvironment.com/environment-and-energy/manufacturers-aim-to-convince-epa-their-chemical-use-is-safe>

Pat Rizzuto

Firms that turn chemicals into merchandise offer EPA data on their chemical use

Environmentalists urge EPA to require companies to provide information

Makers of products from tires and asphalt, to insulation and fragrance, are giving the EPA information about how they use some of the 20 chemicals the agency may review and regulate.

The participation of product makers in the agency’s chemical selection process is noteworthy because they don’t often weigh in on chemical policy debates.

These manufacturers—or “downstream users” of chemicals—aim to persuade the Environmental Protection Agency not to examine a chemical they use, or convince the agency that chemical doesn’t warrant regulation.

The information from industry is included among the first group of comments the EPA began to post July 3 regarding a chemical sorting process it must complete this year.

By Dec. 22, the agency must put 40 chemicals into one of two categories. Twenty chemicals must be identified as “high priority” and EPA will immediately begin to evaluate them; the other 20 chemicals must be “low priority” chemicals that don’t warrant scrutiny now. The agency in March released the list of 40 chemicals that are candidates for either the high- or low-priority classification.

Lines of Reasoning

The Fragrance Creators Association urged the EPA not to evaluate the risks of a synthetic musk known as galaxolide.

The scent is commonly used in cosmetics, shampoos, lotions, detergents, fabric softeners, and household cleaners, according to the EPA, which listed it in March as a candidate for high-priority scrutiny.

But the fragrance association said that doesn’t make sense, because a 2014 agency assessment found the chemical doesn’t pose unreasonable risks.

The sorting, or “prioritization,” process is precedent-setting because it’s the agency’s first attempt under the 2016 Toxic Substances Control Act amendments to decide which chemicals warrant risk evaluations, according to the fragrance association.

“It is crucial that EPA get it right, by faithfully tracking the legal definitions of high and low priority,” the association said. In this case, that would mean designating galaxolide as a low priority, it said.

Other trade associations, such as the Vinyl Institute, the Asphalt Roofing Manufacturers Association, and a group of rubber-chemical manufacturers, provided the EPA some information about their members’ use of three chemicals, and pledged to provide more information on chemical exposure.

Others, such as Willert Home Products, which makes toilet bowl cleaners, and trade associations, such as the International Institute of Synthetic Rubber Producers Inc., provided the EPA available exposure information, but didn't say whether additional details would be coming.

Commercial Implications

The increase in comments from downstream users illustrates the growing awareness that exposure information is essential for the EPA's upcoming risk evaluations, attorneys told Bloomberg Environment.

These companies increasingly recognize their businesses could be affected by the decisions the agency makes, said Martha E. Marrapese, a partner in the Washington office of Wiley Rein LLP.

Occupational exposure and environmental releases are important to the EPA's risk evaluations and vary depending on how a chemical is used, said Herbert Estreicher, a partner with Keller and Heckman LLP.

"What downstream users have to say about their uses is crucial," he said.

Alerts from law firms and chemical trade associations, and the EPA's direct outreach to different industry sectors, are spurring increased participation from downstream users, said Lynn Bergeson, managing partner of Bergeson and Campbell, PC.

There's a "general newfound awareness that TSCA is not just for chemical producers—it is an equal opportunity statute impacting all members of the chemical value chain," Bergeson said by email.

EPA Should Require Data

As the EPA continues to sort through the 40 chemicals, it must require companies to submit exposure and other information, instead of relying on voluntary submissions, the Environmental Defense Fund told the agency.

It said companies could face a high cost from regulations that could ultimately result after the EPA's risk evaluation.

"Companies have a 'financial interest' in the outcome of these proceedings, and they are not impartial," the defense fund said. "EPA cannot simply assume that members of the regulated community will voluntarily disclose unfavorable or complete information about their practices and products."

"If men were angels, no government would be necessary," the EDF said, quoting the Federalist Papers from James Madison or Alexander Hamilton.

Climate Change

Climatewire

Russia joins climate pact for the reason Trump quit — jobs

<https://www.eenews.net/climatewire/stories/1060718231/search?keyword=EPA>

Jean Chemnick, E&E News reporter

As President Trump claimed credit Monday for rescuing the U.S. economy from the "very, very expensive" Paris Agreement, 5,000 miles away Russia was beginning the process of joining the climate accord after its manufacturers warned that staying out would damage their global competitiveness.

In the end, Russia could enter the climate agreement for the same reasons that Trump is quitting it — the economy.

Russian Deputy Prime Minister Alexei Gordeyev tasked the natural resources and foreign affairs ministries with preparing a bill by Sept. 1 that would let Russia join 185 other countries in the Paris accord. The ratification process formally began early this week and will require approval from both the Russian government and parliament. The goal is for Russia to ratify the deal by Sept. 23, when world leaders meet in New York City for the United Nations secretary-general's summit on climate change.

Gordeyev — who serves under Russian Prime Minister Dmitry Medvedev in a headquarters called the White House — posted a statement on a Russian government website Friday in which he stressed that the decision was made for economic reasons.

"Global climatic changes are taking place in the world, which have a significant effect on economic issues," it reads. "The advanced countries are gradually switching to a low-carbon development model by continuously monitoring and encouraging a reduction in greenhouse gas emissions in various sectors."

The statement does not say whether the United States, which is expected to leave the 2015 agreement next year, is counted among these "advanced countries." There is no mention of the United States at all.

Besides formally joining Paris, Gordeyev moved to meet the agreement's requirement that member countries offer a long-term strategy for deep cuts to greenhouse gases by 2050. Russia is separately reviewing legislation to regulate emissions linked to climate change.

A statement published by the government Sunday described decarbonization as a key to long-term competitiveness.

"Electricity in the world is becoming less carbon-intensive, and this determines the competitive advantage of products produced in countries with more 'green' energy," it stated.

The post points to International Energy Agency figures for global investment in renewable energy, which has totaled an estimated \$2.8 trillion over the last 15 years.

Russia ranks with the United States as one of the world's major exporters of oil, natural gas and coal. The United States shipped an estimated \$12 billion in coal and \$47.2 billion in crude oil abroad last year, while Russia exported \$17 billion in coal and \$129 billion in crude. U.S. gas exports weighed in at \$28.4 billion last year compared with Russia's \$7.5 billion.

Trump has said his decision to withdraw from the Paris Agreement is rooted in concern for industrial manufacturers and their workers.

"My administration is now revising the past administration's misguided regulations to better protect the environment and to protect our American workers, so importantly," Trump said Monday at the White House.

Russia's industrial and fossil fuel sectors grappled for years with questions about ratifying the Paris pact, a fact that led Russia to become the second-to-last member of the Group of 20 to join. Turkey still hasn't begun its process.

Then, in January, Russia's largest business association, the Russian Union of Industrialists and Entrepreneurs, rendered its verdict. In a letter to the Ministry of Natural Resources and Environment, the group backed joining major trade partners by ratifying the deal.

To do otherwise could put Russian exports and foreign business ventures at a disadvantage, the letter said.

"Lack of national obligations and government regulation activities to tackle global climate change can serve as a pretext for imposing economic restrictions on Russian companies supplying products and services to other states and participating in international financial activities," said the trade group, which counts two subsidiaries of Russia's state-owned natural gas giant Gazprom among its members.

Lack of Paris membership and domestic climate legislation, the group said, "will reduce the competitiveness of Russian goods and services on foreign markets and additional economic costs."

Russia trades substantially with the European Union, where leaders like French President Emmanuel Macron insist Paris membership must be a prerequisite for any future trade deals.

"There is this fear in Russian industry circles that trade would become more difficult with decarbonizing countries in Europe and elsewhere if Russia would not be part of the Paris Agreement and adhere to targets," said Oldag Caspar, who tracks Russian climate politics from Berlin for the think tank Germanwatch. Also of concern, he said, are looming transparency requirements for fossil fuel investments under the World Trade Organization.

"This issue has been discussed for many years already in Russia that this may become urgent and a problem for the high-fossil and high-energy export products of Russia at some point," he said.

On a call with reporters Monday, EPA Administrator Andrew Wheeler revived a claim by the Trump administration that a provision within the Clean Air Act would bar the United States from discarding domestic policies related to climate change if it stayed in the Paris accord.

"If we fail to meet our targets, those are enforceable under our domestic laws," Wheeler said. "Most other countries who are signatories to the Paris climate accord don't have that same constraint."

International legal experts say that's not true. The United States could discard domestic policies if it chose to, and it could even weaken the pledge agreed to by former President Obama to cut U.S. carbon emissions by 26% to 28% compared with 2005 levels by 2025, while remaining a party to the deal.

"The Paris Agreement leaves it up to every country that joins it, first, what their target is going to be, and second, how they're going to meet their target," said Andrew Light, a member of the U.S. negotiating team in Paris who is now a senior fellow with the World Resources Institute.

Energywire

Perry stirs up debate — again — with climate comments

<https://www.eenews.net/energywire/stories/1060718381/search?keyword=EPA>

Hannah Northey, E&E News reporter

Energy Secretary Rick Perry came under fire yesterday after asserting on Twitter that emissions from the U.S. energy sector have dropped more than those of any other country belonging to the Paris climate accord.

"America continues to lead the world in reducing our carbon footprint and overall energy-related carbon dioxide (CO2) emissions, with every one of the Paris signatories lagging behind us," the secretary tweeted.

Perry's comment arrived a day after President Trump moved to position himself — alongside the DOE chief and EPA Administrator Andrew Wheeler — as a champion of environmental protection despite rolling back regulations aimed at decreasing air and water pollution and tackling climate change.

Some DOE watchers were quick to note that emissions from some European grids have decarbonized faster than those in the United States.

"Fact check: false. The UK has reduced emissions almost 40% since 1990. <http://www.carbonbrief.org/analysis-why-the-uks-co2-emissions-have-fallen-38-since-1990/>. The US has not even reduced emissions 20% since 2005, a higher and easier baseline," tweeted Alex Gilbert, a project manager with the Nuclear Innovation Alliance.

Others noted that the U.S. government's statistical arm, the Energy Information Administration, found emissions from the energy sector increased last year by 2.8%, the largest rise in energy-related CO2 emissions since 2010.

"Although emissions from petroleum — primarily used in the transportation sector — account for the largest share of total energy-related CO2, emissions from natural gas, which increased by nearly 10%, drove the overall increase in

2018," EIA wrote in a January release. "Weather conditions and continued economic growth were the primary factors in increasing energy consumption and emissions in 2018."

EIA also found that emissions from the sector are slated to drop this year and the next, given expectations for milder weather, but that "even with declines in emissions over the next two years, energy-related CO2 emissions in 2019 and 2020 are still projected to be higher than 2017 levels."

An analysis from the Rhodium Group released this week also cast doubt on the administration's assertions. The report shows the United States is now on track to cut emissions by between 12% and 19% compared with 2005 levels by 2025 (Climatewire, July 9).

Janet McCabe, who served as EPA's air chief under President Obama, said the recent uptick in energy emissions shows why unregulated markets can't be relied on to solve the climate problem.

"If we want to achieve reductions in greenhouse gases on a time schedule that is commensurate with the environmental situation that we're in, then we need to move faster than the market is moving," she told E&E News during a recent interview.

In a statement, DOE spokeswoman Shaylyn Hynes said, "Data from both the Energy Information Agency and the International Energy Agency clearly confirms America's environmental record that Secretary Perry proudly highlighted at the White House this week. While there have been ebbs and flows in emissions, since 2005 the trend has been consistently downward. The same EIA data that the critics you mention are citing reflects that emissions increased during several years under the Obama Administration."

Others also backed Perry's assertion, saying it comes down to a matter of metrics.

"It's...not false. The US has reduced CO2 emissions more than any other country in absolute terms since 2005," tweeted Richard Meyer, the director of energy analysis at the American Gas Association. "Maybe that's not one's preferred metric, or it leaves unacknowledged the US's baseline relative to other countries. Fine. Fair. But it is a fact."

Luddites and skeptics

Since becoming secretary, Perry's comments on climate change have come under scrutiny several times, including during questioning in the White House press briefing room two years ago.

At the time, he said carbon dioxide is not the primary driver of climate change and that coal and nuclear power shouldn't be "strangled by government regulations" (E&E News PM, June 27, 2017).

During an interview with Fox News this week, Perry echoed earlier remarks and pointed to natural gas as a tool to thwart warming.

"The climate is changing; there's not any doubt about that. We can have arguments about it isn't happening for this reason or that," the secretary said. "Here's what I think we all agree on, that we need to live in a world that has cleaner air. And America and American natural gas, American innovation, that's what is going to change the world from the standpoint of having clean air."

Previously, Perry has said humans are playing a role in warming the climate but said the debate is about to what degree. That differs from the vast majority of scientists at agencies like NASA, who say humans are the chief driver of warming.

"The people who say the science is settled. ... If you don't believe that, you are a skeptic ... a Luddite. I don't buy that," Perry said at the 2017 briefing. "This is America. ... Have a conversation. ... Let's talk about it. What's wrong with that?"

Perry added that he "can be convinced."

HuffPost

Bush's EPA Chief Slams Trump's Environment Speech: 'He's Living In His Own Reality'

https://www.huffpost.com/entry/trump-environment_n_5d251218e4b0cfb595fd714a

By Alexander C. Kaufman

Republican Christine Todd Whitman, the former Environmental Protection Agency administrator during President George W. Bush's administration, dismissed President Donald Trump's bid to recast himself as an environmental champion, calling the effort doomed to fail amid an ongoing assault on air and water protections.

In an interview with HuffPost, Whitman said Trump's 45-minute speech on Monday touting his "environmental leadership" showed he "knows he's on shaky ground" going into the 2020 election in which, for the first time, global warming and ecological collapse may emerge as core issues.

Christine Todd Whitman, a former governor of New Jersey, served as EPA administrator from 2001-2003.

Whitman said Trump's attempt to put a positive spin on his administration's environmental record is unlikely to impress anyone beyond his loyal base of supporters.

"He's living in his own reality," Whitman, a former New Jersey governor, said by phone Tuesday. "He's definitely in another world."

In his White House speech, Trump scraped the barrel for environmental achievements that didn't require an asterisk, pointing to his signing a bipartisan bill to reduce garbage in the ocean. Other items he highlighted were more problematic in terms of making his case.

REUTERS

Trump bragged about progress in delisting Superfund sites, but that's largely a procedural step based on clean-up work that began, in some cases, decades ago. He stressed how much he values public lands, noting the 1.3 million acres he designated for protection — but glossed over the more than 2 million acres he shaved off other national monuments.

Joined at the podium by EPA Administrator Andrew Wheeler, they spotlighted a 74% reduction in air pollution since 1970, skirting the latest federal data that show a 15% increase in days with unhealthy air in 2017 and 2018, compared to 2013 through 2016.

Yet the misleading examples, Whitman said, are secondary to the glaring reality that Trump's deregulatory blitz poses a risk to environmental health by any measure.

Since taking office, the Trump administration has sought to repeal, replace or delay more than 80 environmental regulations, particularly those dealing with planet-warming emissions from the fossil fuel sector.

Wheeler finalized a proposal last month to replace the Obama-era Clean Power Plan, a sweeping regulation on coal-fired utilities, with the Affordable Clean Energy rule, a modest requirement to add retrofits to some plants. The White House is also working to unwind fuel economy standards, setting up a prolonged legal fight that, as automakers publicly oppose the plan, is widely criticized as a giveaway to oil companies.

Adding policy weight to the president's routine taunting of climate scientists — he delights in pointing to temporary cold snaps as evidence disproving irrefutable long-term warming trends —, the administration appointed climate change skeptics to key White House positions and gutted science advisory boards.

The regulatory rollbacks come as carbon dioxide emissions in the atmosphere are hitting levels unseen in 800,000 years, and scientists across the globe resoundingly warn that the world is quickly running out of time to avoid catastrophic warming.

"I don't think the American people are going to buy that we are somehow going to do better with the environment when we are rolling back every regulation and eviscerating the Science Advisory Board," Whitman said. "Right now, Republicans and the president are on the wrong side of the issue."

FOIA

Greenwire

Press, green groups urge delay for FOIA regs

<https://www.eenews.net/greenwire/stories/1060721531/search?keyword=EPA>

Kevin Bogardus, E&E News reporter

Media groups have pushed back against EPA's new regulation on how to handle Freedom of Information Act requests, appealing to the agency to hold off on implementing the rule.

In a letter sent yesterday to EPA, 39 news organizations raised concerns about the rule's provisions that they say would undermine FOIA, clash with court opinion and "diminish journalists' ability to gather and report information to the public about the actions of the EPA and its personnel."

"For these reasons, the News Media Coalition urges the EPA to suspend implementation of the Proposed Rule and open it to public comment for a period of no fewer than 60 days," said the letter. The Reporters Committee for Freedom of the Press, the Associated Press, the National Press Club and the New York Times Co. were some of the groups that signed the letter.

EPA's FOIA rule is set to go into effect on July 26. The agency has not opened the proposal for public comment, saying it can do so in order to comply with the amended public records law and reflect internal changes at the agency.

EPA has not updated its FOIA regulations since 2002. Since then, Congress has amended the law three times in 2007, 2009 and 2016.

But although the agency has said the proposal is consistent with its past FOIA regulations, it has generated widespread opposition, particularly over language saying top political officials at EPA have authority to issue final determination on public records requests.

The news coalition takes issue with that part of the rule, which says senior political appointees can decide "whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue 'no records' responses."

Critics have cited a 2016 U.S. Court of Appeals for the District of Columbia Circuit opinion that said there is nothing within FOIA that allows agencies to redact particular information from responsive records based on that information's said responsiveness (E&E News PM, June 26).

Environmental groups have also organized to push back against EPA's FOIA regulation, citing that court opinion as well.

In a letter yesterday to EPA Administrator Andrew Wheeler, 16 green and public interest groups also called on the agency to stall the rule.

"We strongly urge EPA to delay implementation of the Rule until the Agency has conducted a sufficient period of notice and comment, in accordance with the requirements of the Administrative Procedure Act," they said.

The Environmental Integrity Project, Center for Biological Diversity and Sierra Club were some of the groups that signed onto the letter.

EPA may have to deal with Congress in response to the regulation. Sen. Chuck Grassley (R-Iowa) said last month he was working on legislation and criticized EPA and the Department of the Interior, which has proposed its own scrutinized public records regulations, for their actions on FOIA (E&E News PM, June 27).

EPA spokesman Michael Abboud referred E&E News to the agency's previous press releases defending the FOIA regulation when contacted for this story.

The agency has pushed back against criticism of the proposal. It released a letter from career EPA officials who helped handle FOIA to address "significant misrepresentations" in response to the Society of Environmental Journalists.

SEJ replied in another letter yesterday, offering to meet in person or over the phone "to discuss how the EPA can hew more closely to the essence of the Freedom of Information Act."

The Hill

EPA's new public records rule lets Trump administration pollute in private

<https://thehill.com/opinion/energy-environment/452417-epas-new-public-records-rule-lets-trump-administration-pollute-in>

BY MEG TOWNSEND, OPINION CONTRIBUTOR

Meg Townsend is an open government attorney at the Center for Biological Diversity, a non-profit advocacy organization focused on protecting at-risk species and protecting the lands, waters and climate those species need to survive.

If it weren't for the public records law, scandal-plagued Scott Pruitt might still be running the Environmental Protection Agency.

Spending records and other public documents released to conservation groups under the Freedom of Information Act revealed a litany of Pruitt scandals — from his \$43,000 private phone booth to his unethical attempt to leverage his position to land his wife a job at Chick-fil-A. These revelations ultimately forced him to resign.

But Americans' access to such crucial information is now at risk. Andrew Wheeler, the new EPA administrator, has signed a new rule allowing him and other political appointees to review requests for public documents and decide which ones to release.

This is a great deal for Wheeler and the fossil-fuel industry, but a dangerous development for public health, wildlife and the environment. Maybe that's why, in a dazzling display of hubris that almost matches his predecessor, Wheeler ignored the required public comment period before quietly signing the rule last month.

This week the Center for Biological Diversity joined 16 other conservation and public-interest groups to urge Wheeler — a former oil-industry lobbyist — to delay the rule at least until the public has a chance to weigh in.

Wheeler's EPA mischaracterizes these significant changes as minor and claims any public discussion about this is "contrary to the public interest." Those claims are false and ridiculous.

Previous administrations have taken pains to separate political appointees from the process of determining which of the public's records should be released to the public. But the Trump administration has taken government secrecy to a whole new level.

Injecting politics into the public records process defeats the law's key purpose. It gives this pollution-friendly administration a powerful new way to hide the damage it's doing to our air, water and wildlife by unprecedented rollbacks of environmental protections.

Wheeler's new public records rule also creates an entirely new reason for the EPA to hide federal documents — "responsiveness."

This contradicts longstanding Department of Justice interpretations of the law. And it conflicts with previous court rulings that forbid federal agencies from redacting or withholding public records or portions of public records they deem “non-responsive.”

Even worse, this new blanket exemption from the public records law will make it nearly impossible for people to challenge EPA’s decisions to keep documents secret. If the EPA says there are no records because a political appointee has determined, illegally, that the documents are “not responsive” to the public records request, then the requestor won’t know that the records even exist.

That makes a mockery of the Freedom of Information Act.

As if that weren’t enough, Wheeler’s new rule will funnel all public records requests to EPA’s Washington, D.C., headquarters, which is already bogged down with an ever-growing backlog.

No longer will regional FOIA staff — those who are most familiar with the issues — make decisions about what to release and what to redact. That crucial task is now entrusted to the office with most of EPA’s political appointees.

This comes despite an internal audit that showed hundreds of career EPA FOIA staffers opposed efforts to centralize the work in D.C. And it contradicts EPA’s claim that this new rule is an effort to improve efficiency and transparency. In fact, it will have the opposite effect.

Regional EPA staff recently blew the whistle on a Minnesota pollution regulator who was trying to stifle EPA’s concerns about the proposed PolyMet open-pit copper mine. Wheeler’s new rule would take dedicated career employees like these out of the loop.

Let’s be clear. This new EPA rule is aimed at hiding policies that foul our air and water, harm endangered wildlife and benefit polluting industries.

The changes to EPA’s public records rule are similar to those approved by the Interior Department earlier this year. As with the Interior rule, the intention is obfuscation and secrecy, not efficiency or transparency.

The public records law may have led to Pruitt’s downfall, but the law is about much more than that.

When our federal agencies undermine the public records law, they hijack democracy and jeopardize public health and the environment. The Trump administration is already working overtime to give powerful polluters everything they want. If Trump’s EPA is able to operate in the shadows, beyond the reach of public scrutiny, the damage could be inconceivable.

The Hill

Pressure mounts against EPA's new FOIA rule

<https://thehill.com/policy/energy-environment/452425-pressure-mounts-on-epa-to-withdraw-new-foia-rule>

BY MIRANDA GREEN

A Democratic lawmaker along with a group of nearly 40 media publications are raising concerns over a new Environmental Protection Agency (EPA) public information rule that could allow political officials more leeway to withhold requested documents.

In a letter sent Tuesday evening, Rep. Katie Porter (D-Calif.) asked EPA chief Andrew Wheeler to review and revise the Freedom of Information Act (FOIA) rule, which she argues shrouds the process in secrecy and failed to go through the typical public comment period.

"Government transparency is central to our democracy. At a time when climate change threatens our communities, public access to the government's work to address this crisis is essential," Porter wrote.

"The rule, as published by EPA, will make the public process for accessing information more opaque. It is particularly concerning that the EPA chose to write this rule without public input."

The Hill was first to report on the finalized rule change, submitted to the public record at the end of June without public comment.

"Before choosing to substantially and formally change the FOIA process at EPA, members of the public should be afforded the opportunity to weigh in with the agency regarding this proposal," Porter wrote.

The agency has argued it did not need to put the rule through a public comment period, pointing to several procedural exemptions.

"It is routine for agencies to update their FOIA regulations to reflect self-executing statutory provisions," a senior EPA FOIA official told The Hill.

According to the new language in the EPA's FOIA rule, the administrator and other officials would be allowed to review all materials that fit a FOIA request criteria, known as responsive documents, and then decide "whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue 'no records' responses."

Lawyers outside the agency who specialize in FOIA requests say the "no records" response could lead to a situation where records seekers are being told there are no documents meeting their search criteria, even if they were found by EPA staffers who handle the requests, with those documents ultimately withheld by political appointees.

The EPA has denied the characterization of the language, arguing the specification in the rule simply states officials have the right to tell requesters there were no records responsive to them. The EPA also denied that the number of political officials allowed to view FOIA requests prior to release was expanded under the latest rule, arguing they had the same powers in the previous version.

Also Tuesday, the Society for Environmental Journalists along the Reporters Committee for Freedom of the Press and 37 other news media organizations sent a letter to the EPA asking it to suspend the implementation of the FOIA rule in order to allow a public comment period.

"The News Media Coalition is deeply concerned about the Proposed Rule, which contains provisions that undermine the Act, are impermissible under clear, binding D.C. Circuit precedent, and would diminish journalists' ability to gather and report information to the public about the actions of the EPA and its personnel," the group wrote.

News organizations that signed the letter include The Associated Press, Politico, Gannett, McClatchy, The New York Times and The New Yorker.

The latest Society for Environmental Journalists letter comes after the nonprofit previously raised flags over the rule at the end of June, a letter which the EPA later derided as containing "numerous inaccuracies."

The group separately responded to EPA Tuesday, writing, "As we said in our initial letter, we believe this new rule will make journalists' jobs even more difficult, and by extension, it 'will impede the public's access to environmental information and its right to know how tax dollars are spent.'"

The news organizations urged EPA to suspend the rule and open it to public comment period for no fewer than 60 days.

Several lawmakers on both sides of the aisle have also expressed concern over what appears to be a growing trend of FOIA secrecy at government agencies.

The Interior Department has also been criticized for proposing a FOIA rule in December that would allow political officials mentioned in FOIA requests the ability to view the responsive records prior to release, in a move dubbed an "awareness review."

Senators from both parties unhappy with the new Trump administration rules say they may craft legislation to fix it. Sens. Chuck Grassley (R-Iowa) and Ed Markey (D-Mass.) are separately considering bills to address the FOIA changes at both agencies.

"In a self-governed society, the people ought to know what their government is up to," said Grassley in a late June speech on the Senate floor.

"The public's work ought to be public. So, I'm working on legislation to address these developments and promote access to government records."

The EPA did not offer any new comment.

Legislation

E&E Daily

House leaders set votes on climate, chemical amendments

<https://www.eenews.net/eedaily/stories/1060720263/search?keyword=EPA>

Philip Athey and Manuel Quinones, E&E News reporter

The House Rules Committee yesterday made in order climate and chemical amendments to the chamber's fiscal 2020 National Defense Authorization Act.

The panel made in order more than 400 amendments to the NDAA, which is likely to pass by the end of the week.

A major focus have been per- and polyfluoroalkyl substances, known as PFAS, which have found their way into the drinking water of numerous communities.

An amendment up for debate by Rep. Chris Pappas (D-N.H.) would list PFAS as toxic under the Clean Water Act.

Not made in order, however, was a proposed amendment from Rep. Debbie Dingell (D-Mich.) to require a hazardous designation under the Superfund law.

Other amendments made in order include:

An amendment to authorize \$5 million for a PFAS health study.

An amendment governing the incineration of materials with PFAS.

An amendment to require the Department of Defense to enter into cleanup agreements with states.

An amendment to require a Government Accountability Office study of DOD's response to PFAS issues in and around bases.

An amendment to create an online clearinghouse for information about PFAS.

Veto threat

The White House, for its part, threatened to veto the House NDAA in a statement of administration policy and took issue with existing PFAS provisions (E&E Daily, July 8).

The statement objected to the bill's requirement that DOD end use of the chemicals in firefighting foam by 2025 even if that is before a "viable" replacement is found.

Currently the military uses PFAS in firefighting foam because of its effectiveness in putting out diesel fires, but the man-made chemicals have been linked to several health problems, including immune diseases and cancer.

Another section of the NDAA that would grant DOD authority to treat or replace water used for agricultural purposes that has been contaminated by military PFAS use also drew the White House's ire.

The statement said the language was "inconsistent with the scientific basis," for EPA's health advisory on the chemical as well as the bill singling out DOD as the source for PFAS contamination.

Kildee said in a release that, "The Administration must put the health and safety of families and service members first — instead of special corporate interests."

Despite the disagreements, and the House Energy and Commerce Committee's planned action on PFAS, the final House-Senate NDAA compromise may likely set significant policy on the substances.

The Senate attached bipartisan language to add PFAS to the list of contaminants tracked by the U.S. Geological Survey. The legislation would also require EPA to set a drinking water standard.

Climate

The House NDAA includes new language tasking the Pentagon with reporting on installations vulnerable to climate change.

Other related amendments are:

An amendment to codify an Obama-era executive order to require the Pentagon to remove barriers against investments in climate resilience.

An amendment to require DOD to account for sea-level rise and flooding projections when developing guidelines for resiliency at facilities.

An amendment to task the Pentagon with including climate-related costs in budget requests.

An amendment to require annual updates on climate vulnerability in consultation with other agencies.

Politico

House momentum builds on PFAS legislation

<https://subscriber.politicopro.com/article/2019/07/house-momentum-builds-on-pfas-legislation-1577694>

BY ANTHONY ADRAGNAANNIE SNIDER

Senior members of the Energy and Commerce Committee are expressing concern about efforts to address toxic chemicals that are contaminating drinking water supplies across the country through the defense bill on the House floor this week, but backers of action are feeling upbeat about getting amendments tackling the problem considered.

More than a dozen bills relating to toxic PFAS chemicals have been filed in the House and negotiations are underway between Democrats and Republicans on E&C about a more holistic approach to addressing PFAS issues. But lawmakers representing communities facing major contaminations are anxious to attach language on the must-move National Defense Authorization Act, the same bill that the Senate used as a vehicle for its PFAS package last month. Several senior Democrats told POLITICO they think amendments tackling the issue will get floor votes this week even amid the jurisdictional concerns from E&C.

"I think we're going to get some of the amendments we want in, for sure," Rep. Dan Kildee (D-Mich.), chief deputy whip for House Democrats, told POLITICO. "Jurisdiction issues I know are tough but I think more recently I think there's been a greater understanding that look, get it into this ... They [committee leaders] don't have a bill ready and it's the bird in the hand situation."

Rep. Debbie Dingell (D-Mich.), whose amendment requiring EPA to designate PFAS as hazardous substances under the Superfund law is being closely watched, told POLITICO: "I heard lately that it actually may make it. Honest to God, it changes every 15 minutes."

The House Rules Committee is working through which of the hundreds of amendments filed to the underlying the bill, H.R. 2500 (116), will get floor votes. Chairman Jim McGovern (D-Mass.) told reporters he expected the committee will agree to an NDAA rule by late Tuesday night.

Additional amendments were flowing in just hours before the Rules Committee meeting began Tuesday evening, including ones to require EPA to set a drinking water standard for all PFAS and to set effluent standards for the chemicals under the Clean Water Act.

The potential movement comes even as senior E&C members expressed concern that action on the issue in NDAA would detract from efforts to reach a broader agreement tackling the problem.

Rep. Paul Tonko (D-N.Y.), chairman of the E&C Environment and Climate Change Subcommittee, which has jurisdiction over PFAS issues, said the committee is working "very hard" to reach a deal on a broader bill.

"It will require a very holistic approach and if we just piecemeal it with other legislation, we may not deal with the issue with the justice it requires," Tonko told reporters. "I just don't want to give the sense that we're done with the issue. It deserves its own recognition in legislation."

Rep. John Shimkus of Illinois, the top Republican on the subcommittee of jurisdiction, said he plans to oppose the NDAA amendments because of the jurisdictional concerns.

"It's our committee, we're trying to deal with it, we've already had some negotiations and discussions. This is really not the purview of the NDAA."

But an industry lobbyist said that including some PFAS provisions on the defense bill could help drive E&C Republicans to the table so that a bipartisan deal cut there could become the House's position on PFAS issues in conference negotiations with the Senate.

"I think the inclusion of these provisions on NDAA gives the Democrats major leverage in negotiations with the minority," the lobbyist said.

Indeed, across the Capitol, Environment and Public Works ranking member Tom Carper (D-Del.) said a House vote on the Dingell amendment would be "very helpful" in conference. Carper has been working with Chairman John Barrasso (R-Wyo.) and others in the upper chamber trying to reach agreement on a Superfund designation — a deal that has yet proven elusive.

Politico

What's the (climate) risk?

<https://www.politico.com/newsletters/morning-energy/2019/07/10/whats-the-climate-risk-455344>

KELSEY TAMBORRINO

PFAS PROVISIONS GET A VOTE: A series of PFAS amendments will get a vote as the House considers its defense authorization bill this week. Late Tuesday night, the House Rules Committee ruled nine PFAS-related amendments in order and teed them up for votes. Among those are:

An amendment from Rep. Chris Pappas (D-N.H.) to require EPA to list PFAS as toxic pollutants under the Clean Water Act, a means of requiring effluent limits and pretreatment standards for the chemicals.

An amendment from Rep. Debbie Dingell (D-Mich.) to prohibit the military from procuring food packaging containing PFAS for MREs.

A bipartisan amendment to require DoD to enter into cooperative agreements with states for contamination cleanups.

Didn't make the cut: A closely watched amendment from Michigan Democratic Reps. Debbie Dingell and Dan Kildee to require EPA to designate all PFAS as hazardous substances for the purposes of Superfund — a key element in forcing the Pentagon and other responsible parties to foot the bill for cleanups — wasn't ruled in order. Nor were amendments pertaining to key issues in the Senate-passed PFAS package including requiring EPA to set an enforceable drinking water limit and require public reporting of PFAS emissions under the Toxic Releases Inventory.

House Energy and Commerce Committee leaders aren't thrilled about moving the provisions on the defense authorization bill as they attempt to craft their own deal on a broader bill, Pro's Anthony Adragna and Annie Snider report. But the inclusion of some provisions in the defense bill could give Democrats leverage.

The White House has already threatened to veto the defense package, in part due to a pair of provisions in the bill relating to PFAS. One of those provisions would require the Defense Department to phase out use of firefighting foam containing PFAS by 2025, Annie reports. The other would authorize DoD to treat water contaminated by the chemicals that is used for agricultural purposes or else provide replacement water. Others elements that drew the administration's ire were the top-line spending levels, which are \$17 billion less than the president's budget request, and a provision limiting funding from being used to construct President Donald Trump's border wall.

IN THE WORKS: Ahead of a hearing today on surface transportation reauthorization, EPW Chairman John Barrasso said the committee will vote on a reauthorization bill on Aug. 1, Pro's Tanya Snyder reports. "We have a scheduled markup for the first of August" and the hope is to add the surface bill to the agenda of that markup, the Wyoming Republican said. Barrasso would not say whether the bill includes a climate title but said ranking member Tom Carper (D-Del.) "has some things he would like to have included."

FIRST IN ME: Sens. Ed Markey (D-Mass.) and Carper will introduce a bill that would set a national goal for the reduction of greenhouse gas emissions from the federal highway program, as well as help states adapt to climate change. The senators will introduce the Generating Resilient, Environmentally Exceptional National Streets Act before today's EPW hearing.

MANCHIN'S ALASKA VOYAGE: ME caught up with top Senate Energy Democrat Joe Manchin following his visit to Alaska over the July Fourth break. He and Murkowski toured everything from the western North Slope to the village of Kaktovik within Arctic National Wildlife Refuge.

— He said he was impressed by safety precautions surrounding the exploration. "I did not see what people were concerned about" within the ANWR site, he said. On the North Slope, "they're doing everything humanly possible [safety-wise] that I saw and the people there are very supportive that live closest and are affected by the drilling right there," he added.

— He saw real life impacts from climate change. "If you really want to see climate change, go to the Arctic and if you really want to see it in the United States of America, go to Alaska," Manchin said, adding he "couldn't believe" the heat — it was 85 degrees in Anchorage.

Democrats 'should' tour coal mines: Manchin said Democratic presidential candidates "should" accept an invitation from the United Mine Workers of America to tour coal mines and interact with miners, but he cast doubt on whether they could win back the voters who've abandoned the party in recent years. "If there's a transition [away from fossil fuels], fine, we understand that, but don't accelerate it," he told ME. "And that's what seemed to happen with the last administration. They seemed to jump on and accelerate it."

Pollinators

Bloomberg Environment

Agriculture Department Cuts Program Tracking Bee Declines

<https://news.bloombergenvironment.com/environment-and-energy/agriculture-department-cuts-program-tracking-bee-declines>

Adam Allington

Honeybee losses have increased substantially in recent years

Scientists cite the need for baseline population data to understand why

The U.S. Department of Agriculture is suspending the only federal program that tracked honeybee losses, which could make it more difficult to understand declines in bee health and the subsequent impact on food production.

“The decision to suspend data collection was not made lightly, but was necessary given available fiscal and program resources,” USDA said in a statement about its decision to stop collecting data for the annual Honeybee Colonies report.

Commercially managed honeybee colonies are used by farmers to pollinate a variety of fruit, nut, and vegetable crops. Some agricultural economists estimate that as much as one in three bites of food we eat is dependent on bees for pollination.

The die-off rates for commercially managed honeybee colonies has increased sharply in recent years due to various factors, including pesticides, parasite infestations, and habitat loss.

The USDA’s National Agricultural Statistics Service (NASS) announced on July 1 that it will stop collecting data for the report, which was a key priority of the Obama administration.

Bad News for Researchers

“It’s really frustrating,” Kari Segraves, a professor of biology at Syracuse University who studies plant-pollinator interactions, said about the decision to stop the surveys.

“I understand these surveys can be time consuming and expensive,” she said, “but having it [the data] is also so important if we’re going to have a chance to answer these big questions about what’s going on with pollinators in our environment.”

Last month researchers from a nonprofit led by the University of Maryland reported that losses for honeybees over the winter were the highest they’ve been in 13 years.

In recent years, issues relating to pollinator health have gained more traction in Congress. The 2018 Farm Bill established a new position within the USDA’s Office of the Chief Scientist for a “Honeybee and Pollinator Research Coordinator.”

While the Farm Bill does not specifically mandate the Honeybee Colonies Survey, the decision to cancel it “certainly is counter to the overall intent and will impede efforts to understand honey bee populations,” said Scott Black, executive director of the Xerces Society for Invertebrate Conservation.

“I think it will be harder to coordinate research on honeybees if we do not have these surveys.”

Pollinators and Pesticides

The decision by USDA is the second move in recent weeks involving federal policy and its impact on bee population research.

On June 16, the Environmental Protection Agency announced “emergency exemptions” under the Federal Insecticide, Fungicide, and Rodenticide Act allowing farmers to spray sulfoxaflor—a bee-killing insecticide—on millions of acres of sorghum and cotton across 14 states.

The EPA said the exemption was necessary to control sugarcane aphids and tarnished plant bugs.

The move drew immediate pushback from environmental groups who say such exemptions are simply a way to skirt the enforcement of pollinator protections.

“The only emergency here is the Trump EPA’s reckless approval of this dangerous bee-killing pesticide,” Lori Ann Burd, environmental health director at the Center for Biological Diversity, said in a statement. “It’s sickening that even amid the current insect apocalypse, the EPA’s priority is protecting pesticide industry profits.”

A 2015 decision by the U.S. Court of Appeals for the Ninth Circuit revoked the registration of sulfoxaflor, made by Dow Agrosiences (now Corteva). Following the ruling, EPA amended the product’s label to restrict its use on crops attractive to bees, which include cotton and sorghum.

In a statement released at the time, the National Sorghum Producers downplayed the impact of the pesticide on bees.

The group cited the EPA’s assessment of the chemical, taken before President Donald Trump took office, which stated that “sulfoxaflor clearly is a better compound for non-target organisms than nearly all of its alternatives,” and “poses little risk to fresh or saltwater fish and invertebrates.”